IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 32678 of 2006(M)

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PETITIONER:

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DEVADASAN,
DRIVER, KERALA STATE WAREHOUSING CORPN. LTD.,
ERNAKULAM, (NOW TRANSFERRED TO WADAKKANCHERRY FOR DOING GODOWN WORK IN THE GODOWN OF THE KERALA STATE WAREHOUSING CORPN., WADAKKANCHERRY.)

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

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1. THE KERALA STATE WAREHOUSING CORPN.,
REPRESENTED BY THE MANAGING DIRECTOR,
ERNAKULAM.

2. LT. COL. K.G.RAMACHANDRAN (RETD.),
NOW HOLDING THE POST OF MANAGING DIRECTOR,
KERALA STATE WAREHOUSING CORPORATION,
ERNAKULAM.

BY ADV. SRI.MAJNU KOMATH, SC, K.S.W.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.K. DENESAN, J.**

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**W.P.(C) No. 32678 OF 2006**
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**Dated this the 11th January, 2007**

**J U D G M E N T**

The petitioner was recruited as a Driver to work in the Corporation. In the context of the reliefs prayed for by him in this writ petition to quash Ext. P1 order passed by the 1st respondent and the relieving order (Ext. P2) passed by the Manager of the Corporation at Thripunithura and the further prayer for a direction to post him back in the Ernakulam office and permit him to continue as Driver in the Ernakulam office, the fact that his recruitment was to the post of Driver and no other post assumes relevance.

2. As per Ext. P1, the petitioner and another Driver by name Thankachan have been transferred respectively to Wadakkancherry and Kunnamkulam and posted to the State Warehouses of the respondent-Corporation in the above places. They have been directed to attend the godown work in the concerned Warehouses. The petitioner was working as Driver in the Container Freight Station at Thripunithura as on the date of issuance of Ext. P1. He was relieved as

per Ext. P2 on 26-10-2006. Presently he is attending to the work in Wadakkancherry godown of the respondent-Corporation.

3. The petitioner would contend that he is not expected to discharge works in posts other than that of a Driver or Fork-lift Operator or equivalent posts. Therefore he can be posted only to a place where there are either cars or fork-lifts. According to him, the impugned order posting him in a place where there is no scope for discharging the work of a driver or that of a fork-lift operator or any other equivalent post is only to humiliate and harass him. The impugned orders are assailed on the ground of malafides and want of authority.

4. The 1st respondent has filed a counter affidavit. It is admitted that the petitioner was posted at Container Freight Station, Thripunithura prior to Ext. P1 order. It is averred in the counter affidavit that there were four drivers at the Container Freight Station, Thripunithura, that their services were not fully utilised, that at present there are only two fork-lifts at Container Freight Station,

Thripunithrua and that only two drivers are necessary to operate the fork-lifts. It is also averred that one car stationed at Container Freight Station, Thripunithura was auctioned in October, 2006. Therefore, it became necessary for the respondents to utilise the services of the petitioner and the other driver who were idling and therefore they were deployed to the State Warehouses, Wadakkancherry and Kunnamkulam as per Ext. P1 order. The respondents would contend that the petitioner cannot have any legal grievance because his posting in the godown does not result in any reduction in pay and allowances and that he cannot complain that doing the work of a godown keeper is not within the scope of his duties and responsibilities. Learned counsel for the respondents invited my attention to clause 20(1) of the Kerala State Warehousing Corporation Staff Regulation, 1963 to highlight the rule position that employees of the Corporation are bound to serve the Corporation in such capacity and in such places as may be directed by the Corporation from time to time.

5. The petitioner has filed a reply affidavit.

Learned counsel for the petitioner submitted that one driver has become excess only due to the fact that the newly appointed Chairman of the Corporation has dispensed with the services of the driver already engaged to drive the car of the Chairman, and instead, has appointed a new recruit to suit his convenience. Learned counsel for the respondents submits that the Chairman is entitled to have that privilege, and therefore, recruiting a driver of his choice is not against law.

6. On a consideration of the rival contentions of the parties, it seems that the point for consideration is whether the petitioner is liable to be posted as a Worker in the godown.

7. It is admitted position that the petitioner was recruited as Driver and is qualified for that post. The respondents have no case that any deficiency in the discharge of his duties as Driver or Fork-lift Operator was noticed. Though I am inclined to agree with the contention of the respondents that the employees are liable to be transferred from one place to another under the respondent-Corporation, I find it difficult

to accept the plea that a Driver can be transferred and posted as worker in the godown of the Corporation.

8. It is common knowledge that the duties and responsibilities of Drivers and Fork-lift Operators are entirely different from that of a Worker in the Godown. The power of transfer has to be exercised keeping in mind the equivalence of posts. Law authorises transfer only within the range of transferability. Merely because two posts carry the same scale of pay, an inter-se transfer between the post of driver and that of a worker cannot be justified. ***State of West Bengal*** v. ***Hirendra Nath Banerjee*** (AIR 1967 Cal. 285), is a case decided by the High Court of Calcutta. In that case the Registrar of Rent Controller's Court was transferred to the post of Certificate Officer under the Bengal Public Demands Recovery Act. The court held that where a person was appointed permanently as a Registrar by way of promotion from the post of a Deputy Registrar, it was an implied condition of the appointment that the incumbent will hold that post and no other, and as such it was not a transferable post. In ***Prem Beharilal Saksena*** v. ***Director of Medical and***

***Health Services Lucknow*** (AIR 1959 All 629) while considering the case of an Anaesthetist attached to the State Hospital at Kanpur, the Allahabad High Court held that where a government servant has been appointed to a specific post and that post is in its very nature such that it can be performed at the particular place only, he cannot be transferred to another post. A Division Bench of the Andhra Pradesh High Court in ***State of Rajasthan*** v. ***Kailash Chandra Jain & another*** (1973 Lab.I.C. 221) while affirming the judgment of the Single Bench, held that the action of the management in converting a workman into a non-workman is liable to be declared invalid. The High Court of Delhi in ***Prem Praveen*** v. ***Union of India*** {1973 (2) SLR 659} held that "logically it does not stand to reason that a person recruited to a particular cadre should be compelled against his wishes to serve outside the cadre". Courts have leaned in favour of the view that transfers between interchangeable and equated posts alone would be valid. In ***V.C., L.N. Mithila University*** v. ***Dayanand Jha*** {1986 (3) SCC 7} the Hon'ble Supreme Court expressed the view that the transfer of the Principal

of a college as a Reader in another college ordered by the Vice Chancellor, even though the two posts were carrying the same grade and pay was illegal, on the ground that the posts were not equivalent. The Apex Court observed in the above decision that while determining the equivalence of posts the true criterion is the status and the nature and responsibility of the duties attached to the two posts.

9. Transfer between posts which are not equivalent requires the consent or willingness of the employee/employees or the option exercised by them in favour of such transfer. A unilateral decision of the Management to transfer the employee contrary to the above principle will give rise to a cause of action for the aggrieved employee to question that decision. Therefore, in cases where the members of the service belonging to a particular cadre or post become surplus and the management, for bonafide reasons, interchange the employees from one post or cadre to another post or cadre, with the object of retaining them in service, even such interchangeability can be justified only if it is done with the willingness or consent of the

employees concerned.

10. In the above view of the matter Exts. P1 and P2 orders to the extent they affect the petitioner are set aside. The respondents are free to deal with the case of the petitioner in accordance with law, keeping in view the observations made above. If the petitioner expresses his willingness or consent to work in a post other than that of Driver or Fork-lift Operator, the same shall be considered by the 1st respondent and appropriate decision taken.

The writ petition is disposed of as above.

**K.K. DENESAN**
**JUDGE**

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